IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.17998 of 2006 and M.P.No.1

N. Kannan ... Petitioner

Vs.

1. The Director of School Education,
Chennai - 600 006.

2. The Joint Director (Higher Secondary Education),
Tamil Nadu School Education,
Chennai - 600 006.

3. The Chief Educational Officer,
Salem - 1. ... Respondents

This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the 2nd respondent made in Na.Ka.No.119453/W1(3)/05 dated 26.4.2006 quash the same and direct the respondents to correct the date of birth in the SSLC book as 5.6.1950 instead of 10.6.1948 as per the decree and judgment in O.S.No.4670 of 1979 on the file of the VI Assistant City Civil Court, Chennai, dated 5.2.1981.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.A.Arumugam, AGP

O R D E R

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Petitioner seeks to quash the proceedings of the second respondent in Na.Ka.No.119453/W1(3)/05 dated 26.4.2006 and direct the respondents to correct his date of birth in the SSLC book as '5.6.1950' instead of 10.6.1948 as per the decree and judgment in O.S.No.4670 of 1979 on the file of the VI Assistant City Civil Court, Chennai, dated 5.2.1981.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit filed in support of the writ petition are as follows.

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(i) The original date of birth of the petitioner is 5.6.1950. However, when he was admitted into the School, his father gave a wrong date of birth as 10.6.1948 and therefore in the SSLC book, his date of birth is entered as 10.6.1948 instead of 5.6.1950. Petitioner passed SSLC in the year 1967, passed M.A., M.P.Ed., degrees and was appointed as Physical Director in the Government Higher Secondary School, Mettur Dam in the year 1976, where he is working till date.

(ii) Petitioner was appointed in the post on 30.3.1976 and on 29.7.1978 he submitted an application to correct his date of birth in the SSLC book as 5.6.1950. Since no action was taken, petitioner filed O.S.No.4670 of 1979 on the file of the VI Assistant City Civil Court, Chennai, and prayed for a decree declaring that his correct date of birth is 5.6.1950, instead of 10.6.1948. In the said suit, the respondents 1 and 3 herein are the defendants. After trial, the suit was decreed on 5.2.1981 as prayed for. However, the petitioner could not get the certified copy of the decree immediately, due to the death of his counsel. Petitioner further states that no appeal was filed by the respondents against the said decree and judgment of the Civil Court.

(iii) On 1.12.1986, petitioner requested the third respondent to correct the entries in the SSLC book as per the Civil Court decree dated 5.2.1981, who in turn forwarded the request to the first respondent on 11.2.1987. The first respondent on 15.5.1987 directed the petitioner to re-submit the application with the following particulars,

(a) Certified copy of judgment and decree in O.S.NO.4670 of 1979 (in original)
(b) In the decree, directions have been issued to correct the plaintiff's date of birth in the SSLC as 05.06.1950 instead of 10.06.1948. Hence necessary corrections may be obtained from the Court in the decree and submitted.
(c) The reason for non production of his SSLC or its copy in the Court may be stated.

(iv) On 12.6.1987 petitioner re-submitted the application to the third respondent through the Headmaster of the School, after complying with the above directions of the first respondent. On 5.8.1987 petitioner's SSLC book was returned by the third respondent. Petitioner made a request to the third respondent to correct the SSLC book through the Headmaster and the Headmaster forwarded the request to the third respondent. On 13.4.2005 the third respondent returned the papers raising certain queries for which the petitioner submitted explanation on 19.9.2005. On 18.10.2005 the third respondent forwarded the request of the petitioner to the first respondent, who instead of passing orders, seem to have forwarded the request to the second

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respondent. The second respondent on 26.4.2006 rejected the request of the petitioner's request on the ground that the request for correction of date of birth has been made belatedly. The said order is under challenge in this writ petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Physical Director on 30.3.1976 and he had applied for correction of his date of birth in the SSLC book on 29.8.1978 itself, that is within five years from the date of his joining in service and as no action was taken by the respondents, he filed O.S.No.4670 of 1979 on 29.4.1979 and the Civil court also passed a decree in favour of the petitioner on 5.2.1981, which is also well within five years from the date of petitioner joining in service. Thus there is no delay in petitioner making his claim to correct his date of birth. Learned counsel also contended that the respondents having failed to implement the order of the Civil Court, second respondent is not justified in rejecting the request at this stage on the ground of delay. Learned counsel also submitted that the Civil Court decree has become final and the respondents 1 and 3 herein were parties to the Civil Court proceeding and hence they are bound by the decree and they cannot now take the stand that they will not obey the decree.

4. The learned counsel appearing for the respondents submitted that even though the original application has been made in time, the Civil Court decree has been passed in 1981 and only in the year 1986 the decree was produced before the respondents and thus there is considerable delay in submitting the Civil Court decree and therefore the second respondent is justified in rejecting the request of the petitioner.

5. I have considered the rival submissions of the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

6. The point in issue is whether the petitioner had applied for correction of his date of birth within a period of five years from the date of his joining in service and whether the respondents are bound by the decree of the Civil Court dated 5.2.1981, which has become final.

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7. Admittedly the petitioner has proved that he had made his claim within five years and also filed the Civil suit and obtained the decree within five years from the date of his joining in service and therefore his claim cannot be rejected on the ground of delay. Insofar as the binding nature of the Civil Court decree is concerned, the respondents 1 and 3 are parties in the Civil Suit. The prayer in the suit was for a declaration that the correct date of birth of the petitioner is 5.6.1950 and also for a direction to the first respondent herein to correct the date of birth in the SSLC book. Paragraph 11 of

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the Civil Court Judgment along with the operative portion is extracted hereunder for proper appreciation.

> "11. It is seen from the records that the plaintiff has taken early step for demanding the authorities to correct the date of birth. Therefore he issued notice under 80 C.P.C. which is marked as Ex.A-3 and Ex.A-4 and A-5 are the acknowledgement from the defendants 1 and 2. Even though the defendants 1 and 2 received the notices they did not come forward to rectify the wrong date of birth. Therefore the plaintiff has to seek his relief in the court. Ex.A-3 is dated 29.8.1978 and the same is acknowledged by the defendants 1 and 2 on 30.8.1978. The suit is filed 60 days after the issue of notice. Having regard to the above circumstances, I feel that the suit is not bad for want of proper statutory notice under Sec.80 C.P.C.
>
> For the foregoing reasons I am inclined to hold that the plaintiff is entitled a declaration that his correct date of birth is 5.6.1950 instead of 10.05.1948 as entered in the S.S.L.C. Book under issue No.1, that the plaintiff is entitled for an injunction by way of direction to the 1st defendant to correct the plaintiff's date of birth in the S.S.L.C. Book as 5.6.1950 under issue No.2 that the suit is not barred by limitation under issue No.3 and that the suit is not bad for want of proper statutory notice under Sec.80 C.P.C. under Issue No.4 I find all these issues only in favour of the plaintiff.
>
> In the result the suit is decreed declaring that the correct date of birth of the plaintiff is 5.6.1950 instead of 10.6.1948 as entered in the S.S.L.C. Book, and granting an injunction by way of directing the 1st defendant to correct the plaintiff's date of birth in the S.S.L.C. book as 5.6.1950. No costs."

A perusal of the Civil Court Judgment shows that the Civil Court had considered the claim of the petitioner on merits and passed the decree of declaration and further directed the first respondent herein to correct the date of birth as 5.6.1950.

8.(a) Similar issue arose before this Court in the decision reported in 1985 WLR 742 (S.Selvavinayagam v. State of Tamil Nadu, rep.by the Secretary to Govt. Dept. of Co-Operation, Madras-9). Paragraph 16 of the decision reads thus,

> "16. Thirdly, it has to be pointed out that

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the petitioner approached this Court earlier and he had been directed to file a suit. No doubt, what the Court meant was that the petitioner should seek all the reliefs he sought for in the writ petition before the civil court. The direction of Mohan, J. cannot be construed to mean that it was confined to the filing of a suit only for getting the date of birth corrected in the S.S.L.C. book. The direction was for the filing of a comprehensive suit, viz., the correction of date of birth in the S.S.L.C. book and in terms thereof the correction of the date of birth in the service register and the grant of privileges and rights flowing therefrom. Be that as it may, the petitioner had filed a suit against the Director of School Education and obtained a decree. The validity of the decree cannot be questioned, because it is not a collusive decree or a decree vitiated by any other infirmity. The decree, though not a decree in rem, is fully binding on the Director of School Education and it was on account of that he had ordered alteration in the S.S.L.C. book of the petitioner's date of birth. The respondents are not entitled to say that since the Registrar was not a party to the suit, the decree would not be binding on him. It may be that the decree does not have executable force against the Registrar. But even so, as the decree of Court was passed against the Government of Tamilnadu represented by the Director of School Education, the Registrar is bound to give due weight to the decree and act upon it unless for compelling reasons, which stand in the way of the decree and its consequences being given effect to."

Further in paragraph 20 learned Judge gave the following directions, which reads thus,

"20. On account of these special features, I am of the view that a rule should be issued to the petitioner on terms indicated below. The impugned order of the first respondent in G.O.Rt.No.883, Food and Co-operation dated 5.5.1982 will stand quashed. Now that the petitioner has retired from service, the respondents will take the peculiar features of the petitioner's case into consideration and pass suitable orders in the changed circumstances of the case, viz., whether the petitioner should be deemed to have validly

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superannuated on 31.8.1984 and whether he should be granted retirement benefits on that basis. The respondents are given six months time from the date of receipt of a copy of this order to pass suitable orders on the pension papers of the petitioner in the light of the observations contained in this order."

(b) A Division Bench of this Court in the decision reported in AIR 1997 Madras 386 (Manonmaniam University v. K.S.Arts College) in paragraph 24 held that the decree of the Civil Court between inter parties is binding on inter parties.

(c) In the decision reported in AIR 1965 SC 65 (Mohanlal v. Benoy Krishna), the Honourable Supreme Court held that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it and the correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'.

9. This being the legal position, the second respondent herein is not justified in rejecting the request of the petitioner particularly when the delay in producing the decree of the Civil Court has been explained stating that the delay was due to the death of his counsel, who appeared in the Civil Court.

10. Taking into consideration the over all view of the matter and having regard to the Civil Court decree, the impugned order dated 26.4.2006 passed by the second respondent is hereby quashed and the respondents are directed to correct the date of birth of the petitioner as '5.6.1950' in his SSLC book in terms of the Civil Court decree in O.S.No.4670 of 1979 dated 5.2.1981 on the file of the VI Assistant Judge, City Civil Court, Madras, within a period of four weeks from the date of receipt of copy of this order.

The writ petition is allowed as above. No costs. Connected miscellaneous petition is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Registrar,
City Civil Court, Madras -104.

2.The VI Assistant Judge,
City Civil Court, Madras-104

3. The Director of School Education, Chennai - 600 006.

4. The Joint Director (Higher Secondary Education),
Tamil Nadu School Education, Chennai - 600 006.

5. The Chief Educational Officer, Salem - 1.

+1cc to Mr.S.Doraisamy, Advocate Sr 33432

JP (CO)
km/2.8.

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